84-460

Office - Supreme Court, U.S.
FILED
SEP 17 1984
ALEXANDER L. STEVAS
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. _____

CLIFTON S. GREENE, Pro Se,

Petitioner,

v.

NYC HEALTH & HOSPITAL CORPORATION

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CLIFTON S. GREENE, Pro Se
1333 President Street
Brooklyn, New York 11213
(212) 493-7028

55pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the District Court committed reversible error when it dismissed Pro Se Plaintiff's complaint alleging violations of a federal statute and federal regulations while seeking to invoke federal jurisdiction based on federal question.

2. Whether a Pro se Plaintiff who does not invoke the precise words under 42 U.S.C., Sec. 1983 or other civil rights statutes but simply states that the jurisdiction of the court is invoked pursuant to federal question, violation of Title 10 U.S.C., Chapter 55, and violation of U. S. Department of Defense Champus Regulation 6010-8-R provide sufficient notice pursuant to Federal Rules of Civil Procedure to survive a motion for judgment on the pleadings.

3. Whether the District Court denied Petitioner his constitutional

right to due process of law when it granted respondent's motion for judgment on the pleadings without giving Petitioner a reasonable opportunity to amend his complaint to be heard, to obtain or to be appointed counsel.

4. Whether the District Court committed reversible error when it failed to inform the parties that it was treating Defendant's motion for judgment on the pleadings as if it was a motion for summary judgment and when it did not solicit further submissions on the question of which federal civil rights statute Plaintiff was relying upon to invoke federal question jurisdiction.

5. Whether under the mandatory phrasing of federal rules 12(b) and 12(c), the Court's failure to provide a fair procedure for submission of affidavits, other factual material, an amended

complaint to obtain assistance of retained or appointed counsel was reversible error.

6. Whether the District Court committed reversible error when it dismissed Petitioner's pendent claims and federal claims without properly considering Petitioner's federal question basis for invoking federal jurisdiction.

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1. The District Court Committed Reversible Error When It Dismissed Pro Se Petitioner's Complaint Alleging Violations Of A Federal Statute And Federal Regulations While Seeking To Invoke Federal Jurisdiction Based On Federal Question.

2. A Pro Se Plaintiff Who Does Not Invoke The Precise Words Under 42 U.S.C., Sec. 1983 Or Other Civil Rights Statutes But Simply States That The Jurisdiction Of The Court Is Invoked Pursuant To Federal Question, Violation Of Title 10 U.S.C., Chapter 55, And Violation Of U. S. Department Of Defense Champus Regulation 6010-8-R Provides Sufficient Notice Pursuant To Federal Rules of Civil Procedure To Survive A Motion For Judgment On the Pleadings.

3. The District Court Denied Petitioner His Constitutional Right To Due Process Of Law When It Granted Respondent's Motion For Judgment On The Pleadings Without Giving Petitioner A Reasonable Opportunity To Amend His Complaint, To Be Heard, To Obtain Or To be Appointed Counsel.

4. The District Court Committed Reversible Error When It Failed To Inform The Parties That It Was Treating Defendant's Motion For Judgment On The Pleadings As If It was A Motion For Summary Judgment And When It Did Not Solicit Further Submissions On The Question Of Which Federal Civil Rights Statute Plaintiff Was Relying Upon To Invoke Federal Question Jurisdiction.

5. Under The Mandatory Phrasing Of Federal Rules 12(b) and 12(c), The Court's Failure To Provide A Fair Procedure For Submission Of Affidavits, Other Factual Material, An Amended Complaint To Obtain Assistance Of Retained Or Appointed Counsel Was Reversible Error.

6. The District Court Committed Reversible Error When It Dismissed Petitioner's Pendent Claims And Federal Claims Without Properly Considering Petitioner's Federal Question Basis For Invoking Federal Jurisdiction.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. _____

CLIFTON S. GREENE, Pro Se,

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v.

NYC HEALTH & HOSPITAL CORPORATION

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

DECISIONS BELOW

The Petitioner, Clifton S. Greene, respectfully prays that a writ of cer-

tiorari issue to review the judgment of of the United States Court of Appeals for the Second Circuit on June 18, 1984. The decision of the Second Circuit is unreported and is printed here at Appendix "A". The Order and Decision of the United States District Court for the Eastern District of New York granting Respondent's motion for judgment on the pleadings and dismissing Petitioner's Complaint is also unreported and is reprinted here as Appendix "B".

In addition, Petitioner's Complaint and Petitioner's Opposition are reprinted here as Appendices "C", and "D", respectively.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on June 18, 1984. This Petition for Certiorari was filed within 90 days of that

date. This Court's jurisdiction is invoked under 28 U.S.C., Sec. 1254(1).

STATUTES AND RULES INVOLVED

10 U.S.C., Sec. 1071.

Sec. 1071. Purpose of this chapter.

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

42 U.S.C., Sec. 1981.

Sec. 1981. Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and

equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

42 U.S.C., Sec. 1983

Sec. 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Fed.R.Civ.P. 12(b)(6)

> . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed.R.Civ.P. 12(c)

> (c) Motion For Judgment on the Pleadings.
>
> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the plead-

> ings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

This petition seeks review of an affirmance by the United States Court of Appeals for the Second Circuit of a judgment of the United States District Court for the Eastern District of New York granting Respondent's motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(c). The Court of Appeals "affirm substantially for the reasons set forth" in the District Court "Memorandum and Order dated February 6, 1984."

The basis of the District Court's granting Respondent's motion on the pleadings was the asserted "absence of any basis for federal jurisdiction ...."

Petitioner appeared pro se and sued the Respondent, the New York City Health and Hospital Corporation for violation of federal rights and common law rights. Petitioner alleged violations of rights under 10 U.S.C., Ch. 55, governing medical and dental care of army personnel, and regulations governing the Civilian Health and Medical Program of the Uniformed Services. Petitioner asserted "Federal Question," along with the above-mentioned statute and regulations, as the basis for federal court jurisdiction. The District Court, however, viewed Petitioner's complaint as alleging a claim solely for "damages for psychological harm suffered" and not for

benefits under the clear federal statute and federal regulations set forth in the Complaint. Based on this misconstruction of Petitioner's Complaint, the District Court found that there were "no grounds for maintaining federal jurisdiction."

Moreover, the District Court found that even "under 42 U.S.C., Sec. 1983," damage to Petitioner and his wife's reputation would not constitute a deprivation of a federal constitutional or statutory right giving rise to a federal cause of action. This conclusion by the District Court overlooked the clear language and meaning of 42 U.S.C., Sec. 1983. Petitioner's suit was for violation of rights he and his wife enjoyed under 10 U.S.C., Ch. 55 and violation of rights he and his wife enjoyed under regulation governing medical and dental care of army personnel and their dependents.

In short, the facts which gave rise to Petitioner's Complaint was not limited solely to the fact that Petitioner's wife's name was placed on a debtor's list, or because he suffered psychological harm as a result of Respondent's wrongful actions. Instead, Petitioner's Complaint was based primarily on violations of rights founded on federal statutes and regulations. Petitioner repeatedly asserted in his Complaint that it was the "flagrant violation of federal law and regulation" which had caused him to suffer, among other things, irreparable damages. In addition, Petitioner attempted to incorporate by reference, a statement of his claims as set forth in his Notice of Claim against the City of New York. In addition, Petitioner asserted in his Complaint that Respondent had acted fraudulently and illegally in causing his harm.

Since Petitioner was proceeding below without the assistance of an attorney, his Complaint might not have been artfully drafted. But, this alone is not grounds for dismissal. The Federal Rules of Civil Procedure requires simple notice pleading. This is because fairness and not excessive technicality is the guiding principle under the Federal Rules of Civil Procedure. Gordon v. National Youth Work Alliance, 675 F.2d 356 (D.C.Cir. 1982). If the District Court and Respondent believed Petitioner's Complaint to be too vague or indefinite, fundamental fairness would have required that Petitioner be granted a reasonable opportunity to amend his Complaint or to file a more definite statement of his claims before they were dismissed.

Petitioner's case was before the Court on January 13, 1983 for a status

conference and was set for trial on February 27, 1984 before it was dismissed by the District Court without an opportunity to be heard and to present additional evidence in support of Petitioner's claims for relief.

REASONS FOR GRANTING THE WRIT

1. The District Court Committed Reversible Error When It Dismissed Pro Se Petitioner's Complaint Alleging Violations Of A Federal Statute And Federal Regulations While Seeking To Invoke Federal Jurisdiction Based On Federal Question.

2. A Pro Se Plaintiff Who Does Not Invoke The Precise Words Under 42 U.S.C., Sec. 1983 Or Other Civil Rights Statutes But Simply States That The Jurisdiction Of The Court Is Invoked Pursuant To Federal Question, Violation Of Title 10 U.S.C., Chapter 55, And Violation Of U. S.

Department Of Defense Champus Regulation 6010-8-R Provides Sufficient Notice Pursuant To Federal Rules of Civil Procedure To Survive A Motion For Judgment On the Pleadings.

3. The District Court Denied Petitioner His Constitutional Right To Due Process Of Law When It Granted Respondent's Motion For Judgment On The Pleadings Without Giving Petitioner A Reasonable Opportunity To Amend His Complaint, To Be Heard, To Obtain Or To be Appointed Counsel.

4. The District Court Committed Reversible Error When It Failed To Inform The Parties That It Was Treating Defendant's Motion For Judgment On The Pleadings As If It was A Motion For Summary Judgment And When It Did Not Solicit Further Submissions On The Question Of Which Federal Civil Rights Statute Plaintiff Was

Relying Upon To Invoke Federal Question Jurisdiction.

5. Under The Mandatory Phrasing Of Federal Rules 12(b) and 12(c), The Court's Failure To Provide A Fair Procedure For Submission Of Affidavits, Other Factual Material, An Amended Complaint To Obtain Assistance Of Retained Or Appointed Counsel Was Reversible Error.

6. The District Court Committed Reversible Error When It Dismissed Petitioner's Pendent Claims And Federal Claims Without Properly Considering Petitioner's Federal Question Basis For Invoking Federal Jurisdiction.

This case has to do with Respondent's flagrant violation of a Federal statute, namely, (1) Title 10, U.S.C. Ch. 55; (2) U. S. Department of Defense, Champus, Regulation 6010-8-R; (3) Negligent breach of a Federal contract; contract between Department of Defense, Champus and Petitioner; (4) Fraudulent misapplication of the contractual agreement between the Petitioner Blue Cross of Rhode Island, and Kings County Hospital; (5) Scheme to defraud; (6) Libel and slander.

The Petitioner seeks benefits pursuant to the provisions provided for all six (6) of the violations listed hereinabove. (See page 2, para. 2 of the Complaint.)

The lower court erred in granting summary judgment, based on a non-allegation (defamation) and two (2) inapplicable judicial (case) laws.

The Petitioner did not sue for defamation because wife's name was placed on debtor's list. Neither was the suit brought because of damage to character or reputation of the Petitioner. The suit was brought because of the violations mentioned herein, and the false material resulted from same, which in turn caused wife's name to be placed on debtor's list. This brought mental anguish, shame, and humiliation to the Petitioner.

The lower court's decision to grant summary judgment was based on the effects or results, as opposed to the violations of the cause of action--Title 10, U.S.C., Ch. 55, U.S. Department of Defense Regulation 6010-8-R, and negligent breach of a Federal contract.

The Petitioner further contends that the damages suffered by the Petitioner would <u>not</u> have occurred had the Respon-

dent not violated the hereinabove mentioned cause of action (Title 10, U.S.C., Ch. 55).

Libel and Slander

The Petitioner did not sue for defamation under libel and slander allegation #6 in the Complaint--Repeat, did not sue for defamation. Instead, Petitioner sued for the false material used in causing wife's name to be placed on debtor's list. (See page 2 of Plaintiff's memorandum of law in opposition of motion in the pleadings.)

The Petitioner relied upon judicial (case) law commonly known as the "Alton Memo," formerly known as Alton Telegraph Printing Co., Inc. v. James Green Construction Co., Inc., 15 Br 367. Alton Telegraph Printing Co., Inc. v. Green, 16 Br 787 and Alton Telegraph Co., Inc. v. Green, Ill. App. 63, Ill. Dec. 465, 438 NE2d 203, 107 Ill. App.3d 755.

The lower court completely ignored the Petitioner's reliance upon this judicial (case) law in Petitioner's memorandum of law in opposition of motion for judgment on the pleadings. (See page 3 of same under Argument.)

In essence, the "Alton Memo" says that the basis for libel law is not whether it is written or spoken; the basis for libel law is simply that the material involved is false.

Keep in mind that the material involved in Greene v. NYC Health and Hospital Corporation is the fraudulently charged $819.00. The "Alton Memo case had to do with the Alton Telegraph newspaper and two of its reporters.

An Unusual Case

The Alton Telegraph case is unusual because of the size of the award, $9 2 Million and because the suit was not the result of a printed story but stemmed

from a memo written by reporters to Federal investigators.

There were two reporters diligently trying to determine if something was true, and they nearly lost the newspaper.

The Telegraph case began in 1969, when two reporters, William Whotka and Joseph Melosi, tried to verify a tip that a local savings and loan association was laundering Chicago Mafia money. In a memo to a U. S. Justice Department Investigator, they outlined suspicions that money was going from the mob to James C. Green, a local builder, in the form of loans. The tip was not confirmed, but the memo was passed to Federal bank regulators in Chicago, who subsequently forced the savings and loan association to cut off Mr. Green's credit.

The allegations were never printed in the Telegraph; nevertheless, Mr. Green charged in his 1975 suit that his

business failed as a result of the memo. Five years later, after a five week trial, a Madison County, Illinois jury found the charges to be false and awarded him $9.2 Million, including $2.5 Million in punitive damages.

The Petitioner relied upon the "Alton Memo" case for relief; in both cases, the material was <u>false</u>.

The lower court wrongfully assumed defamation in its decision to grant summary judgment to Respondent, while totally ignoring Petitioner's allegation of false material resulting from violations of Federal statute and regulations mentioned herein.

The lower court's decision in granting summary judgment was based upon a non-allegation (defamation) which has the same connotation as a person or corporation being tried on charges, <u>other</u> than those in which they were

arrested or indicted for; the Petitioner did not allege defamation in the complaint or the claim.

To inform the court of the effects of the violations mentioned in the six (6) allegations should not have been the basis for granting summary judgment. The Court's decision to grant summary judgment should have been based on the Respondent's violation of the Federal statute (10 U.S.C., Ch. 55), the violation of U. S. Department of Defense Regulation 6010-8-R, and the flagrant violation and negligent breach of a federal contract.

Further, the court relied upon two (2) judicial case laws that were inapplicable: (1) 42 U.S.C. 1983 and (2) Paul v. Davis, 424 U.S. 693 (1976).

42 U.S.C. 1983

42 U.S.C. 1983 had to do with the transmittal of material or information

between governmental agencies; the material had to do with child abuse, which was proven to be truthful as it related to the plaintiff. Keep in mind the truthfulness of the material about the plaintiff.

Now, in Greene v. NYC Health and Hospital Corporation, Greene is a private individual and NYCHHC is a private corporate structure, not a city agency, as its name denotes. Therefore, it has no immunity from law suits. Further, the material or information used to cause damages to the Petitioner was not only false, but a part of a fraudulent scheme that defrauded both the Federal government (IRS) and the Petitioner.

The point the Petitioner is trying to make is that the judicial (case) law, 42 U.S.C. 1983, relied upon by the lower court in granting summary judgment to the Respondent (NYCHHC) was inappli-

cable. 42 U.S.C. has to do with the truthfulness of information or material about the Plaintiff.

Whereas, in Greene v. NYCHHC, the material used to cause damages to Greene was false. Therefore, the lower court erred in granting summary judgment based on an inapplicable judicial (case) law.

Paul v. Davis, 424 U.S. 693 (1976)

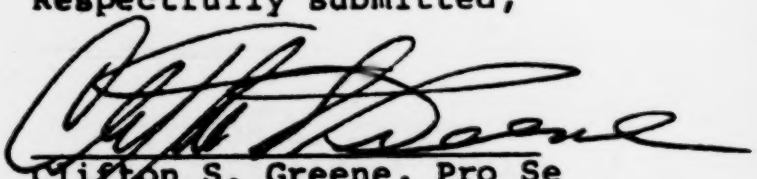
In Paul v. Davis, 424 U.S. 693 (1976), the Plaintiff had been arrested and was charged with shoplifting but was never convicted. Thereafter, the plaintiff's photograph and name appeared on a flyer of "active shoplifters" which was circulated by the police to alert businesses in metropolitan Louisville. The court ruled in favor of the Defendant as it did in 42 U.S.C. 1983. Why? Because the material or information about both of the plaintiffs were true.

In Greene v. NYCHHC, the material or information was false--therefore, making 42 U.S.C. 1983 and Paul v. Davis, 424 U.S. 693 (1976) inapplicable in the lower court's decision granting summary judgment to Respondent.

CONCLUSION

The lower court's decision granting summary judgment based on a non-allegation and two (2) inapplicable judicial (case) law was outrageously unfair and unjust. The Petitioner prays that the lower court's decision be reversed and order this case to be tried by jury as was requested and previously scheduled.

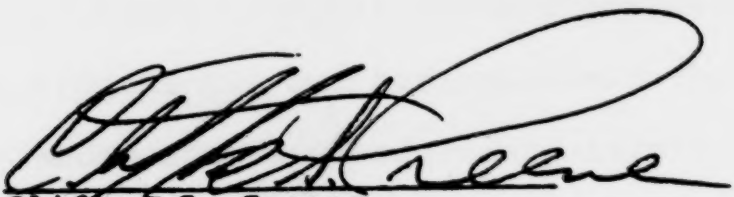
Respectfully submitted,



Clifton S. Greene, Pro Se
133 President Street
Brooklyn, New York 11213
(212) 493-7028

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September 1984, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Frederick A. O. Schwarz, Jr., Corporation Counsel, 100 Church Street, New York, New York 10007, Counsel for Respondent.



Clifton S. Greene

September 17, 1984

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. _____

CLIFTON S. GREENE, Pro Se,

Petitioner,

v.

NYC HEALTH & HOSPITAL CORPORATION

Respondent.

APPENDICES "A" through "D"

CLIFTON S. GREENE, Pro Se
1333 President Street
Brooklyn, New York 11213
(212) 493-7028

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 18th day of June, One Thousand Nine Hundred and Eighty-four.

PRESENT:

HON. HENRY J. FRIENDLY,
HON. ELLSWORTH A. VAN GRAAFEILAND,
HON. JON O. NEWMAN,
Circuit Judges

- x

CLIFTON S. GREENE,
as Executor of the
Estate of Irene Greene;
and Self as the Widower
of Irene Greene,

Plaintiff-Appellant,

v.

NEW YORK CITY HEALTH &
HOSPITAL CORPORATION,

Defendant-Appellee.

FILED
Jun 18, 1984

ORDER
84-7157

- x

Plaintiff, appearing pro se, appeals from a judgment of the United States District Court for the Eastern District

of New York (Glasser, J.), entered February 16, 1984, granting the defendant's motion pursuant to Fed. R. Civ. Pr. 12(c) for judgment on the pleadings, and dismissing the complaint.

We affirm substantially for the reasons set forth in Judge Glasser's Memorandum and Order dated February 6, 1984.

/s/
Hon. Henry J. Friendly

/s/
Hon. Ellsworth A. Van Graafeiland

/s/
Hon. Jon O. Newman

.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated caes before this or any other court.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - x

CLIFTON S. GREENE, as Executor of the Estate of Irene Greene; and Self, as the widower of Irene Greene,

Plaintiff,

-against-

NEW YORK CITY HEALTH AND HOSPITAL CORPORATION,

Defendant.

82 Civ. 2135

MEMORANDUM AND ORDER

- - - - - - - - - - - - - - - - x

GLASSER, United States District Judge:

Defendant has moved, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, for judgment on the pleadings. For the reasons set forth herein, defendant's motion is granted.

Plaintiff, appearing pro se, essentially seeks relief for defendant's allegedly wrongful placement of his wife's name on a debtor list. He alleges

that this has caused humiliation and emotional distress. Federal jurisdiction is alleged pursuant to 10 U.S.C. Ch. 55, governing medical and dental care of army personnel, and regulations governing the Civilian Health and Medical Program of the Uniformed Services, apparently because plaintiff believes that it was a violation of these provisions that resulted in his wife's placement on the debtor list. Inasmuch as plaintiff is not seeking benefits pursuant to these provisions, but rather damages for psychological harm suffered from the debtor list, I find that there are no grounds for maintaining federal jurisdiction. Even if plaintiff's complaint were framed as a suit under 42 U.S.C. Sec. 1983, the damage to his and his wife's reputation, standing alone, would not constitute a deprivation of a federal constitutional or statutory right giving

rise to a federal cause of action. See Paul v. Davis, 424 U.S. 693 (1976). In the absence of any basis for federal jurisdiction, defendant's motion for judgment on the pleadings must be granted.

SO ORDERED,

/s/
United States District Judge

Dated: Brooklyn, New York
February 6, 1984

Copies of the foregoing Memorandum and Order have been mailed this date to the following:

Mr. Clifton S. Greene
1333 President Street
Brooklyn, New York 11213

Frederick A. O. Schwarz, Jr., Esq.
Corporation Counsel
100 Church Street
New York, New York 10007
Att: Joseph I. Lauer, Esq.
Gabriel Taussig, Esq.
Albert G. Fredericks, Esq.
David Clinton, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - x

CLIFTON S. GREENE,
as Executor of the
Estate of Irene Greene;
and Self, as the widower
of Irene Greene,

Plaintiff,

JUDGMENT

CV 82-2135
(ILG)

-against-

FILED
FEB 16, 1984

NEW YORK CITY HEALTH AND
HOSPITAL CORPORATION,

Defendant.

- - - - - - - - - - - - - - - -

A memorandum and order of Honorable I. Leo Glasser, United States District Judge, having been filed on February 16, 1984, granting defendant's motion for judgment on the pleadings, it is

ORDERED AND ADJUDGED that the plaintiff take nothing of the defendant; that defendant's motion for judgment on the

pleadings is granted; and that the complaint is dismissed.

/s/
Robert C. Heinemann
Clerk of Court

Dated: Brooklyn, New York
February 16, 1984

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - x

CLIFTON S. GREENE,
as Executor of the
Estate of Irene Greene;
and Self, as the widower
of Irene Greene,

Plaintiff,

COMPLAINT
PLAINTIFF
DEMANDS
TRIAL BY
JURY

-AGAINST-

NEW YORK CITY HEALTH AND
HOSPITAL CORPORATION,

Defendant.

- - - - - - - - - - - - - - - x

TO THE HONORABLE, THE JUDGES OF THE
THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK:

1-AT ALL TIMES HEREINAFTER MENTIONED, PLAINTIFF WAS AND STILL IS A RESIDENT OF 1333 PRESIDENT STREET, BROOKLYN, NEW YORK 11213.

2-DEFENDANT, NYCHHC, IS A PUBLIC BENEFIT CORPORATION; INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK. AND HAVING A MAIN OFFICE AT 125 WORTH

STREET, ROOM 523, NEW YORK, NEW YORK 10013. AND IS LICENSED TO DO BUSINESS IN THE CITY AND STATE OF NEW YORK. THE CORPORATION ASSUMED THE RESONSIBILITY FOR OPERATION OF THE CITY'S MUNICIPAL HOSPITALS PREVIOUSLY UNDER THE JURISDICTION OF THE NEW YORK CITY DEPARTMENT OF HOSPITALS. 3-THE JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO FEDERAL QUESTION, 1-VIOLATION OF TITLE 10, U.S.C., CHAPTER 55, 2-VIOLATION OF U.S. DEPARTMENT OF DEFENSE CHAMPUS REGULATION 6010-8-R. (SEE ATTACHED COPIES OF EXHIBIT---A AND B).

4-THE DEFENDANT, NEGLIGENTLY VIOLATED THE FEDERAL LAW AND REGULATION

1- NEGLIGENCE BREACH OF CONTRACT, 2- VIOLATION OF TITLE 10, U.S.C., CHAPTER 55, 3- VIOLATION OF U.S. DEPARTMENT OF DEFENSE CHAMPUS REGULATION 6010-8-R, 4- FRAUDULENT MIS-APPLICATION OF THE

CONTRACTUAL AGREEMENT BETWEEN THE FEDERAL GOVERNMENT, THE PLAINTIFF, BLUE CROSS OF RHODE ISLAND, AND KINGS COUNTY HOSPITAL, 5- SCHEMED TO DEFRAUD, 6- LIBEL AND SLANDER.

2-BECAUSE OF THE NEGLIGENT BREACH OF CONTRACT, AND THE FLAGRANT VIOLATION OF THE FEDERAL LAW AND REGULATION MENTIONED HEREIN, THE DEFENDANT HAS CAUSED THE GOOD NAME OF THE DECEASED, IRENE GREENE, TO BE HELD IN DISREPUTE; BY PUBLISHING FRAUDULENT, ILLEGAL AND ERRONEOUS INFORMATION AS TO THE INDEBTEDNESS TO THE DEFENDANT. AND, BY COMMITTING THESE FRAUDULENT ACTS, THE DEFENDANT HAS FURTHER CAUSED THE SPONSOR AND WIDOWER OF THE DECEASED, DEEP SHAME, LASTING HUMILIATION AND IRREPARABLE DAMAGES.

THEREFORE, THIS PUNITIVE DAMAGE LAW SUIT. FURTHER, SEE ATTACHED, NOTICE OF CLAIM AGAINST THE CITY OF NEW YORK,

FOR ADDITIONAL FACTS UPON WHICH THIS COMPLAINT IS BASED.

WHEREFORE PLAINTIFF DEMANDS:

MONEY DAMAGES IN THE AMOUNT OF $2,000.000---IRENE GREENE'S ESTATE

MONEY DAMAGES IN THE AMOUNT OF $3,000.000---CLIFTON S. GREENE, EXECUTOR, WIDOWER.

$5,000.000---TOTAL

PERMANENT INJUNCTION AGAINST THE DEFENDANT FROM PERFORMING CERTAIN ACTS IN THE FUTURE.

1- PUBLISHING ILLEGAL AND FRAUDULENT INDEBTEDNESS.

2- PASSING ALONG ILLEGAL AND FRAUDULENT INDEBTEDNESS TO COLLECTION AGENCIES AND MAKING THIS INFORMATION AVAILABLE TO CREDIT BUREAUS.

ANY FURTHER RELIEF WHICH THE COURT MAY DEEM APPROPRIATE.

/s/
CLIFTON S. GREENE,
CAPT. AUS RET.
1333 PRESIDENT STREET
BROOKLYN, NEW YORK 11213
(212) 493-7028

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - x

CLIFTON S. GREENE,
as Executor of the
Estate of Irene Greene;
and Self, as the widower
of Irene Greene,

Plaintiff, CV 82-2135

-against-

NEW YORK CITY HEALTH AND
HOSPITAL CORPORATION,

Defendant.

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PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION OF MOTION FOR
JUDGMENT ON THE PLEADINGS

Preliminary Statement

This memorandum of law is submitted in opposition of defendant New York City Health and Hospitals Corporation's Motion, made pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, for a judgment on the pleadings dismissing the complaint against it.

CONCLUSION

PLAINTIFF'S COMPLAINT FAILS TO STATE A FEDERAL CAUSE OF ACTION FOR WHICH THIS COURT CAN GRANT RELIEF AND THEREFORE THE ENTIRE COMPLAINT MUST BE DISMISSED.

Dated: New York, New York
January 18, 1984

Respectfully submitted,

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STATEMENT OF FACTS

The defendant violated Federal Law Title 10, U.S.C., Chapter 55, and U.S. Department of Defense Champus Regulation 6010-8-R when fraudulently placed plaintiff's name on a debtor list as owing $819.00 to defendant. When in fact, the $819.00 was a disallowed amount by the U.S. Department of Defense Champus Agency. This $819.00 was disallowed, because it was medically not necessary for the procedure performed and even if it was necessary, same was included in per diem contract --- as opposed to additional charges.

This debtor list of names were auctioned off to the highest bidder, collection agency, who in turn made same available to all credit bureaus.

Defendant committed a wrongful act --- same, causing plaintiff shame and humiliation and libel.

Plaintiff asks for money damages in the amount of five million dollars ($5,000,000.00) plus in-junctive relief as requested in plaintiff's complaint.

ARGUMENT

It was never the intent of plaintiff to invoke defamation of reputation or character. This was a wrongful assumption on the part of defendant --- instead plaintiff contends that the material involved were false --- the material was the fraudulent $819.00 which was disallowed by the U.S. Defense Department Champus Agency.

The basis for libel law --- is not whether it is spoken or written --- the basis for libel is simply that that material involved is false. Re: Judicial (case) Law --- Alton Telegraph Printing Co. Inc. --- James Green, Construction Co., Inc. 15BR 367. Alton Telegraph Printing Co., Inc. --- Green,

16BR 787 and Alton Telegraph Co., Inc. --- Green, Ill App. 63 Ill Dec. 465, 438 NE2d 203 107 Ill App 3d 755; commonly known as the Alton Memo.

The defendant knowingly showed utter reckless disregard for the truth and facts in this matter of $819.00. At the time defendant committed this wrongful act, that in itself is grounds for punitive damages.

Defendant bad debted the plaintiff for $493.50 --- this was a wrongful act by the defendant -- the defendant schemed to defraud both the federal government and the plaintiff -- by not mailing the plaintiff patient cost share of $493.50. Reason for not doing so was to maximize the recovery of amounts disallowed by the Defense Department Champus Agency --- The Defendant did not wish to take a chance on mailing patient its cost share and being paid for them, there would be

no place to go for collecting the disallowed $819.00 so patient was bad debted wrongfully and dunned wrongful in a scheme to defraud. Plaintiff has proof of this allegation, and would present same to the court on trial date.

The defendant, has committed a Federal criminal offense --- when knowingly bills the beneficiary or patient for more than the patient's share of Champus determined allowable charge --- such an action constitute fraud --- violation of title 10, U.S.C. Chapter 55, and Department of Defense regulation 6010-8-R --- Federal laws provide for criminal penalties for knowingly submitting or making any false fictitious or fraudulent statements or claims in any matter within the jurisdiction of any department or agency of the U.S.

Plaintiff respectfully requests that defendant's Motion for Judgment on

the pleadings be denied.

The 90-day requirement for filing of Notice of Claim (General Municipal Law) Sec. 50-e is not of itself a sufficient ground for summary dismissal --- since, issues of fact are presented as to estoppel against the city, respondant superior, and the city's responsibility to indemnify the defendant.

Plaintiff concedes late claim filing --- but that does not mean the ballgame is over --- it simply means that if plaintiff wishes to pursue the matter further, plaintiff would have to start an action within 1 year and 90 days, from date of occurrence --- date of occurrence was May 11, 1981 --- date complaint and summons served was July 29, 1982 one (1) year and seventy eight (78) days --- from date of occurrence.

Although Notice of Claim was filed late (General Municipal Law - Sec. 50e)

--- Summary Judgment cannot be had on that ground alone. Since there are issues of fact as to estoppel and as to the city's responsibility to indemnify the defendant --action was timely commenced; governing statute of limiations as to defendant - Re: Judicial (case Law 56 Miscellaneous Reports, 2d series Santo Sorg, plaintiff, v. City of New York et al; defendant Supreme Court, Special term, New York County, March 19, 1968.

General Municipal Law (Note 12 - Art. 4) Sec. 50-e --- 13. Indeminification where complaint alleged causes of action in fraud and negligence but basic claim was one sounding in indemnification and plaintiff's claim was that negligence which gave rise to its liability and that the defendant city was active tort - reason --- provisions for

Notice of Claim did not apply. Re: Accredited Demolition Construction Corp. v. City of Yonkers, 1971, 37 A.D. 2d 708. 324 N.Y.S. 2d 377.

CONCLUSION

PLAINTIFF RESPECTFULLY REQUESTS THAT DEFENDANT'S MOTION FOR JUDGMENT PLEADINGS BE DENIED --- AND THE CASE BE PERMITTED TO PROCEED TO TRIAL AS SCHEDULED.

Dated: Brooklyn, New York
January 30, 1984

Respectfully submitted,

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No. 84-460

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

CLIFTON S. GREENE, Pro Se,

Petitioner,

v.

NYC HEALTH & HOSPITAL CORPORATION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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November 8, 1984

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QUESTION PRESENTED

Whether the District Court properly dismissed, and the Court of Appeals properly affirmed the dismissal of the complaint, in reliance upon this Court's decision in Paul v. Davis, 424 U.S. 693 (1976), where petitioner's claim sounds in defamation?

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STATEMENT OF THE CASE

In July 1982, petitioner commenced this action in the United States District Court for the Eastern District of New York (C1-4).* In his complaint, as

*Unless otherwise indicated, references within parentheses are to the Appendix to the Petition. Petitioner's notice of claim, recited in and annexed to his complaint (C3-4) is not included in the Appendix to the Petition but is cited by respondent.

amplified by a notice of claim annexed thereto, petitioner alleged that his wife Irene received treatment at respondent's Kings County Hospital, located in Brooklyn, New York. Petitioner further alleged that respondent had wrongfully referred a bill for $819 to a collection agency although the respondent was not entitled to recover that amount for its services. Petitioner's wife's name appeared on a published list, causing the name of his wife "to be held in disrepute" and causing "deep shame, lasting humiliation and irreparable damages" to petitioner (C3). Petitioner requested $5,000,000 in damages and relief enjoining respondent from making public such "fraudulent" indebtedness (C4, D4).

The respondent, which served its answer, thereafter moved for judgment on the pleadings. The United States District Court for the Eastern District of New York (Glasser, J.), granted the respondent's motion and a judgment was entered dismissing the complaint (B1-6). In his opinion, the District Judge held that even if the complaint were

framed as a suit pursuant to 42 U.S.C. §1983, the damage to petitioner and his wife's reputation, standing alone, would not constitute a deprivation of a federal right giving rise to a federal cause of action, citing the decision of this Court in Paul v. Davis, 424 U.S. 693 (1976) (B2-3). The District Court further held that petitioner's reference to 10 U.S.C. Ch. 55, which governs medical and dental care of military personnel, and regulations promulgated thereunder, did not provide a ground for maintaining federal jurisdiction since petitioner was not seeking benefits pursuant to such laws and regulations (B2).

On petitioner's appeal to the United Court of Appeals for the Second Circuit, that Court affirmed "substantially for the reasons set forth" in the opinion of the District Court (A1-2).

REASONS FOR DENYING THE WRIT

PETITIONER HAS FAILED TO SET FORTH ANY IMPORTANT REASON FOR GRANTING A WRIT OF CERTIORARI IN THIS CASE.

Petitioner does not seek review by this Court to resolve a conflict between the determination of the District Court, affirmed by the Court of Appeals, and the decisions of other federal or state courts. Petitioner does not present any important issue meriting review by this Court. Rather, the questions raised in this petition are frivolous, and the petition should be denied.

A reading of petitioner's complaint, annexed notice of claim and petition to this Court, makes it clear that petitioner seeks redress for the publication of allegedly defamatory material. However, as this Court held in Paul v. Davis, 424 U.S. 693 (1976), reh. den., 425 U.S. 985 (1976), defamation by a government official does not establish a claim under 42 U.S.C. §1983 or the Fourteenth Amendment. To hold otherwise would

make the "Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States." Paul v. Davis, supra, p. 701.

Petitioner's reliance on 10 U.S.C. Ch. 55, and regulations promulgated thereunder, does not enable him to state a federal claim against the respondent. That statute deals with health benefits of members and certain former members of the military. Petitioner, however, is not seeking to obtain any health benefits or avoid any claim for services by respondent. Accordingly, the complaint was properly dismissed. Under the circumstances, petitioner has failed to tender any issue meriting review by this Court.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

November 8, 1984

Respectfully submitted,

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